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OPERABLE UNIT 5 ACCESS DISPUTE

1-9-91

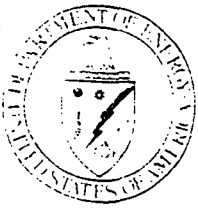
DOE/USEPA

DOE-563-91

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LETTER

OU5



Department of
FMPC Site Office
P.O. Box 398705
Cincinnati, Ohio 45239-8705
(513) 738-6319

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JAN 09 1991
DOE-563-91

Mr. William Muno, Associate Director
Waste Management Division
U.S. Environmental Protection Agency
Region V, 5HR-13
230 South Dearborn Street
Chicago, Illinois 60604

Dear Mr. Muno:

OPERABLE UNIT 5 ACCESS DISPUTE

The U.S. Department of Energy's (DOE) acknowledges that U.S. Environmental Protection Agency's (EPA) notified DOE by letter on January 4, 1991 of EPA's interpretation that the access dispute would end without further action by DOE. We apologize for any confusion that may have been caused by our not responding on the same day. As a result, the EPA sent a letter on January 8, 1991 concluding that the dispute over the imposition of stipulated penalties for access issues is ended. This is in response to the EPA January 8, 1991 letter. The DOE disagrees with this conclusion. As explained below, DOE believes that it properly raised the dispute with its December 19, 1990 letter.

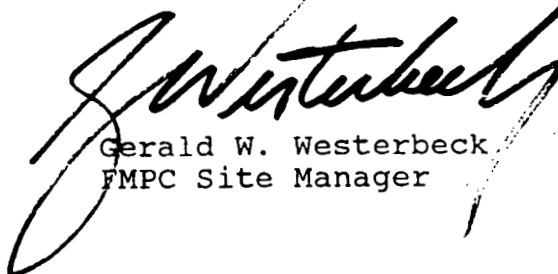
EPA's conclusion that the dispute is ended is based on the fact that thirty (30) days have passed since EPA's notice of stipulated penalties which was dated December 4, 1990 and mailed to Mr. William D. Adams at Oak Ridge Operations in Oak Ridge, Tennessee. Although the December 4, 1990 notice was not made using the notification procedures of Section XXIV.A. of the Consent Agreement, DOE provided a written statement setting forth its position within fifteen (15) days of the date of EPA's notice. Section XVII.B. of the Consent Agreement requires DOE to invoke dispute resolution over stipulated penalties within fifteen (15) days of receipt of a notice of stipulated penalties. DOE's December 19, 1990 letter set forth the information needed under Section XIV.A. to formally elevate a dispute under the Consent Agreement. The letter stated, "This constitutes a written statement of dispute pursuant to Section XIV . . . regarding the inappropriate assessment of stipulated penalties."

DOE invoked dispute resolution in good faith and provided EPA with a written statement setting forth its position within the (15) days mandated in Section XVII.B. of the Consent Agreement.

Under these circumstances, it is not reasonable to apply Section XIV's 30-day clock, intended to promote informal resolution of technical issues between project managers, to preclude resolution of the stipulated penalty issues raised by DOE.¹

Despite the ambiguities created by Sections XIV and XVII of the Consent Agreement, DOE submitted its written position invoking dispute within 15 days of receipt of the December 4, 1990 notice and EPA has known DOE's position since then DOE does not consider the dispute ended and wishes to elevate the dispute to the DRC. Therefore, I have enclosed a copy of the December 19, 1990 written DOE position for that purpose.

Sincerely,



Gerald W. Westerbeck
FMPC Site Manager

Enclosure: As stated

¹Since Section XVII establishes a 15-day clock within which to dispute stipulated penalties, it is questionable whether Section XIV's 30-day clock governs the timing of a dispute raised over stipulated penalties. Section XVII's 15-day clock effectively removes stipulated penalty disputes from the 30-day informal process under Section XIV. This interpretation is consistent with the purpose of the 30-day period to allow the project managers to informally resolve technical issues to minimize or avoid formal dispute over such issues. Because the stipulated penalty assessment was made by EPA's Waste Management Division Director, it is not a technical issue that can be informally resolved between project managers. For these reasons, EPA should not interpret the 30-day period under Section XIV as barring DOE from disputing stipulated penalty issues.

cc w/o encl.:

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